IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/12/2003

CORAM

THE HONOURABLE MR. JUSTICE D. MURUGESAN

WRIT PETITION No.22205 of 2003
and
W.P.M.P.No.27502 of 2003

B. Harsha .. Petitioner

-Vs-

1. The Registrar
Anna University
Chennai.

2. The Chairman of Sports
Anna University
Chennai

3. State of Tamil Nadu represented by
the Secretary to Government
Higher Education Department
Fort St. George, Chennai.9. .. Respondents

Petition filed under Article 226 of The Constitution of India, praying this Court to issue a Writ of Declaration, declaring that the selection procedure adopted by the respondent University in so far as the petitioner is concerned is unconstitutional and ultravires the Constitution of India and consequently, direct the respondent University to forthwith create and allot a seat in the Engineering Course in B.E.,/B.Tech., in Guindy Engineering College of Anna University.

!For petitioner .... Mr.Satish Parasaran

^For respondents .... Mr.G.Masilamani
Senior Counsel
for M/s G.M.Mani Associates

:ORDER

This Writ Petition raises an important question as to the procedure to be adopted in the selection and admission to the seats earmarked under Special Category. It is the bone of contention of the petitioner that once certain number of seats are earmarked for Special Category to be filled up from among

the eligible candidates, the admission shall be made strictly on merits and there is no further question of further following the rule of reservation. On the other hand, it is the stand of the respondent University that in terms of Full Bench Judgment of this Court reported in M.AARTHI (Minor)ETC OTHERS VS THE STATE OF TAMIL NADU AND OTHERS (2002 Writ Law Reporter 898) holding the Special Category seats for the candidates " Physically handicapped, Eminent Sportsmen, Children of freedom fighters and Children of Exservicemen being horizontal reservation and not vertical, these seats should also be filled up by following the rule of reservation.

2. The Government issues orders each year prescribing the number of seats, source of admission, method of selection, eligibility norms etc., for various professional courses based on its policy. Such Government Order is issued in exercise of the power under Article 162 of the Constitution of India. For admissions to the Engineering Courses for the academic year 2003-2004, the Government issued the G.O.Ms. No.198 Education Department dated 30.5.2003. By that Government Order, the Government earmarked 132 seats for five Special Categories and 3% for Orthopaedically Physically Handicapped (Hearing Impaired (deaf)/Visually impared) out of total number of seat s for admission to B.E.,/B.Tech.,/B.Arch., Courses. Based on the Government Order, the Prospectus is issued containing instructions.

3. Since the procedure adopted for admission to Special Category namely, Eminent Sports Person is in question, the relevant clause applicable alone is extracted hereunder:
Clause 4.4. Special Categories:
Since the Special reservation categories are being considered by separate Committees, candidates are instructed to send separate form along with main application. They should fill the special reservation application and send it along with the main application except for sports. They should also enclose a DD for Rs.100/- for each special reservation along with the appropriate certificates. If appropriate certificates or supporting materials for special reservation claim are not enclosed with the Special reservation application then their claim under such categories will not be considered.

Candidate seeking admissions against the special reservation of seats under Item No.6 mentioned below for Eminent Sports Person should produce the main application and the special reservation application and a Demand Draft for Rs.100/- and copies of the relevant certificates etc., in person to the Secretary, TNEA as per Annexure II which also contains selection procedure.
Candidates belonging to Tamil Nadu only will be eligible for the special reservations:

Item No. Category Number of Seats

DOTE AU

6 Eminent Sports
Person(International/ 30 12
National/State
Level Programmes)

4. According to the above clause, 30 seats are allotted to the various colleges under the Control of Director of Technical Education and 12 seats are allotted to Anna University. Candidates seeking admissions against the special reservation of seats for Eminent Sports Person should submit the main application as well as the Special reservation application together with a Demand Draft for Rs.100/- They should also enclose the relevant certificates evidencing their participation in the Sports. The format for special reservation application is also provided in the Government Order. The said format is extracted as under:

SPECIAL RESERVATION APPLICATION
1. TNPCEE 2003 Reg.No.
2. Name of the Candidates
3. Special Reservation Item No. Code No. Name of
applied for Reservation

4. Main Application No.
5. Details of DD/Challan DD No./ Date Amount Issuing
Enclosed Challan Bank
No.

Signature of the Candidate
5. Pursuant to the above Government Order, the information and instructions to the candidates in regard to the admission to various courses were published by the Director of Technical Education, Government of Tamil Nadu. The petitioner applied for admission to Engineering Course as against the seats earmarked for Eminent Sports Person. It is not in dispute that considering his contribution to sports he was selected and was placed in Serial No. VII in the merit list. According to the petitioner, 12 seats earmarked for Anna University should be filled up first from among the candidates in the order of merit and if that be so, the petitioner shown as VII in the merit, ought to have been admitted in Anna University. Since the rule of reservation was followed, the petitioner was not accommodated in Anna University. This procedure is contrary to various dictum laid down by the Apex Court.

6. Per contra, it is the stand of the University empowered with process of selection, that a Full Bench of this Court in the Judgment M. Aarthi's case has held that the State is empowered to provide reservations under Special Category other than the reservation in Tamil Nadu Act 45 of 1994, for Physically Handicapped, Eminent Sportsmen, Children of freedom

fighters and Children of Ex-servicemen and such reservations are horizontal and not vertical. Further in terms of the law laid down by the Apex Court in the judgment reported in ANIL KUMAR GUPTA VS STATE OF U.P. (1995(5) SCC 173) when the reservation is horizontal, the seats should be filled up only by following the rule of reservation.

7. Before entering into discussion on the above, let me now consider the binding nature of the prospectus. In so far as the law on binding nature of prospectus, a Division Bench of this Court reported in RATHNASWAMY DR.VS DIRECTOR OF MEDICAL EDUCATION (1986 WLR 207) may be usefully referred to. While laying down the law on the subject, the Division Bench has held as follows:

A prospectus issued with regard to admission to educational Courses is a declaration to the candidates that a field for development of educational potentialities is available for exploration and that there could be a chance of success. It is a piece of information. But at the same time, we shall not belittle the significance of the need to set out in the prospectus itself a summary or an essence of the norms and rules which should guide and which will be adopted for selection of the competitions in the field of exploration in educational development or at least indicate in the prospectus that there are norms and rules which shall govern. It is highly desirable that a summary or an essence of the relevant norms and rules governing such admissions are set out in the prospectus themselves or their existence atleast is indicated therein. But an omission to do so shall not be taken advantage of by any one to negate and ignore the very norms and rules"

8. A Division Bench of this Court in the judgment reported in MIDHUNA NATHAN VS STATE OF TAMIL NADU REPRESENTED BY ITS SECRETARY, ETC AND OTHERS (1995 WLR 851)after analysing the various decisions has held in para 22(1) that the rules and norms contained in the prospectus are binding on the Selection Committee and the authorities and have to be strictly followed. The binding nature of the prospectus both on the Selection Committee and the candidates applied for admission, is on the basis that it is a piece of information containing the summary essence of norms and rules, that guide both the Selection Committee and the applicant. After prescribing the qualification,eligibility norms, source of admission and method of selection, if any one of the parties should go beyond the prescribed procedure, that would adversely affect the right of other party. It is necessarily therefore the Selection Committee should follow the procedures enumerated in various clauses of the prospectus and shall not introduce any new element or procedure after the prospectus is issued. Infact, once prospectus issued not even amendment or addition to the prospectus either by way of Government Order or

by way of any circular is permissible. This view has been emphasised in the Full Bench Judgment of Andra Pradesh High Court reported in ROMINI SUSAN KURIAN VS STATE (A.I.R. 1992 A.P. 3 80) wherein it has been held as follows:

"... The prospectus issued by the University
binds the candidates who seek admission
and unless any portion of the prospectus
is held to be illegal, we cannot direct
either amendment of the prospectus or consideration of the claim of a student
in a manner otherwise than that provided
in the prospectus..."

9. With the above settled principles of law in mind, let me consider the question raised in this Writ Petition. It is not in dispute that after earmarking 42 seats for Eminent Sports Person, 30 seats are allotted to the colleges under the Control of DOTE and 12 seats are allotted to Anna University. Selections were made from among the candidates applied for admission against the seats reserved for Eminent Sports Person and merit list was also drawn. 42 seats were filled from the merit list by further following the rule of reservation.

10. The question as to the entitlement of the State Government to carve out a particular percentage of seats from the total number of seats to be filled up under the Special Category and whether such reservation falls under either either Article 15(1) or 15(4) of the rule of reservation before a larger Bench of this Court in the judgment reported in 2002 WL 898 and this Court has held that such reservation shall be only under Article 15(4) and that being so, it is a horizontal reservation and not a vertical reservation.

11. The question as to how the seats earmarked under horizontal reservation came up for consideration before the Supreme Court in the judgment reported in ANIL KUMAR GUPTA ETC VS STATE OF U.P. AND OTHERS (JT 1995(5) SC 505). The Supreme Court was considering the Notification of the Government dated 17.5.1994. In that Notification, the U.P. Government reserved 5% of total number of seats for dependents of freedom fighter, 2% of seats for Sons/Daughters of deceased/disabled soldiers, 2% of seats for physically handicapped candidates, 3% of seats for candidates belonging to hill areas and 3% of seats for candidates belong to Uttranchal areas, in all 15% of the seats for the above categories. The said Government Notification also directed that the reservation would be horizontal and the candidates of those categories selected on the basis of merit, would be kept under the categories of Scheduled Castes/Scheduled Tribes/Other Backward Classes/General to which they belong and their admission would be adjusted against the category which the candidate belongs. Since there was an ambiguity in the language employed in the Government Order as to whether the said horizontal reservation was " over all reservations" or " compartmentalized reservations", the Supreme Court after considering the manner in which the seats are earmarked to be filled up under horizontal reservation held as follows:

On a careful consideration of the revised
notification of December 17,1994 and the

aforesaid corrigendum issued by the Lucknow University, we are of the opinion that in view of the ambiguous language employed therein, it is not possible to give a definite answer to the question whether the horizontal reservations are overall reservations or compartmentalized reservations. We may explain these two expressions. Where the seats reserved for horizontal reservations are proportionately divided among the vertical (social) reservations and are not inter-transferable, it would be a case of compartmentalized reservations."

It would have been better and the respondents may note this for their future guidance-that while providing horizontal reservations, they should specify whether the horizontal reservation is a compartmentalized one or an overall one.

As a matter of fact, it may not be totally correct to presume that the Uttar Pradesh Government was not aware of this distinction between "Overall horizontal reservation" and"Compartmentalized horizontal reservation" since it appears from the judgment in Swan Gupta that in the first Notification issued by the Government of Uttar Pradesh on May,17, 1994, the thirty percent reservation for Ladies was split up into each of the other reservations. For example, it was stated against backward classes that the percentage of reservation in their favour was twenty seven percent but at the same time, it was stated that thirty percent of those seats were reserved for ladies. Against every vertical reservation, a similar provision was made, which meant that the said horizontal reservation in favour of ladies was to be a "compartmentalized horizontal reservation". We are of the opinion that in the interest of avoiding any complications and intractable problems, it would be better that in future the horizontal reservations are compartmentalized in the sense explained above. In other words, the Notification inviting applications should itself state not only the percentage of horizontal reservation(s) but should also specify the number of seats reserved for them in each of the social reservation categories, viz., ST.,ST.,OBC., and OC. If this is not done there is always a possibility of one or the other vertical reservation category suffering prejudice as has happened in this case. As pointed out hereinabove, 110 seats out of 112 seats meant for special reservations have been taken away from the OC category alone and

none from the OBC or for that matter, from SC or ST. It can well happen the other way also in a given year.

Now coming to the correctness of the procedure prescribed by the revised notification for filling up the seats, it was wrong to direct the fifteen percent special reservation seats to be filled up first and then taken up the O.C.(merit) quota (followed by filling of O.B.C., S.C., and S.T. Quotas). The proper and correct course is to first fill up the O.C. Quota (50%) on the basis of merit, then fill up each of the social reservation quotas i.e. S.C.,S.T., and B.C., the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied- in case it is an overall horizontal reservations- no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom (If, however, it is a case of compartmentalized horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen in favour of special categories, overall, may be satisfied or may not be satisfied)"

12. Though the seats reserved for special category is horizontal reservation, filling up of seats depends upon the fact as to whether it is an "overall horizontal reservation" or "compartmentalized reservation". According to the Apex Court, the proper and correct course to fill up the O.C. Quota on the basis of merit, then fill up each of the social reservation quotas i.e. S.C.,S.T., and B.C., finally to find out how many candidates belonging to the special reservations have been selected on the above basis. If the quota is fixed for horizontal reservation is already satisfied, then it is an overall horizontal reservation and no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. It is not the case of the respondent University that seats earmarked for OC/BC/MBC/SC/ST have not been filled up though candidates are available. Infact, a number of seats are still vacant to be filled up in various Engineering Colleges. If that be the case,following the further rule of reservation is not permissible, as in the case on hand, the reservation is

overall horizontal reservation and not a compartmentalized reservation.

13. That apart, the procedure adopted to follow the rule of reservation as against the seats earmarked under special categories was viewed by the Apex Court in different angle in the judgment reported in S.SATHYAPRIYA VS STATE OF ANDHRA PRADESH (1996(9) SCC 466). That was a case of medical admission, more particularly reservation of 5% for the special categories. The Apex Court considered 5% of reservation for special categories in the light of the Act 45/1994 whereby the State Government reserved 69% for BC/MBC/SC/ST leaving 31% of the seats for open category. While considering 69% of such reservation, the Supreme Court has observed that if this 5% is also added to 69% of reservation under Article 15(4) of the Constitution, the total number of seats reserved under 15(4) would be 74% Such reservation would be at the cost of the merit. The finding of the Apex Court on this aspect is as follows:

"... Secondly, the 54 seats earmarked to be filled up from among the members of the special categories are deducted from the total number of seats.(These 54 seats are in lieu of 5% reservation in favour of certain special categories in Tamil Nadu). In our opinion, this is wrong. This 5% reservation for the said special categories cannot be in addition to 69% reservation whereas 69% reservation is under Article 15(4) of the Constitution, the 5% reservation for special categories is under Article 15(1). As held in Indra Sawhney vs Union of India, the seats reserved under Article 15(1) (Corresponding to Article 16(1)) should have to be spread across the social reservation categories. In other words, while the reservations made under Article 15(4) can be broadly described as vertical reservations, the reservations provided under Article 15(1) can be described as horizontal reservations. The students admitted against horizontal reservation (5% quota in this case) will necessarily belong either to open competition category or to the BC/MBC/SC/ST category. Once selected they have to be adjusted against their respective quotas prescribed under Article 15(4). Thus, in law, these 54 seats must also be deemed to be now available. The students who will be admitted against these 54 seats will have to be spread across the appropriate categories as mentioned above, which would necessarily mean elimination of some students at the bottom of the respective OC/BC/MBC/SC/ST list to the extent necessary. At this stage, however, we are not inclined to cancel any of the admissions already granted. We, therefore, do not propose to interfere with the method adopted by the

respondents in filling up these 54 seats at this stage though it means a total reservation of 69+5 = 74% reservation-an aspect rightly emphasised by Shri Vaidyanathan. Our concern at present is to provide for the 62 merit students who have been deprived of admission because of the 69% reservation provided by the said Tamil Nadu Act without disturbing the admissions already made"

14. Infact, the Supreme Court did not approve the 5% reservation at all as would affect the meritorious candidates of their entitlement quota. But having considered the pendency of the challenge to the validity of the Act 45/1994, the Apex Court did not disturb the admissions already made and also allowed the State Government to continue the same procedure hitherto followed by the State in earmarking certain number of seats for special category. That is how the specific number of seats are provided for special category. After the Full Bench Judgment of this Court referred to earlier, the State Government is entitled to reserve seats for special category only in respect of Physically handicapped, Eminent Sports Person, Children of freedom fighters and Children of Ex-servicemen.

15. The question as to how the State or for that matter University should follow the reservation while filing up the seats reserved under Special Category, also came up for consideration before a Division Bench of this Court reported in MIDHUNA NATHAN VS STATE OF TAMIL NADU REPRESENTED BY ITS SECRETARY ETC AND OTHERS(1995 W.L.R 851). In para 22(8) the Division Bench has held as follows:

"There cannot be selection on the basis of communal reservation from among the Eminent Sportsmen"

16. Though the Full Bench of this Court considered the special category reservation in the light of Tamil Nadu Act 45/1994 and held that having reserved 69% of the seats under social reservation, it cannot in exercise of the power under Article 162 of the Constitution of India, reserve seats for widows, deserted woman and candidates whose parent/parents has/have suffered for the cause of development of Tamil and contributed towards protection of Tamil etc., and approved the reservation only for Physically handicapped, Eminent Sports Person, Children of freedom fighters and Children of Ex-servicemen, the question as to how the seats earmarked for special category to be filled up was not discussed except holding that special reservation is horizontal and not vertical. The law on the issue is the judgment of the Apex Court in ANIL KUMAR GUPTA VS STATE OF U.P. (1995 (5) SCC 173) Going by the Prospectus, no procedure is prescribed for following the Rule of Reservation in the Special Category of seats. Only a specified number of seats are earmarked to be filled in only on the basis of merit. In that case it is "overall horizontal Reservation". When the reservation is "overall horizontal reservation" applying the rule of reservation for the seats

earmarked for Special Category is bad in law.
17. There is one another aspect of the matter. The prospectus is binding on both the Selection Committee and the candidates. From the prospectus and the special application which has been extracted in the earlier portion of the order, there is no clause indicating the candidates that even for seats earmarked under special category, rule of reservation will be followed. In the absence of such indication also, the procedure in filling up the special category of seats particularly in the Eminent Sports Person category by following the rule of reservation is not in conformity with the prospectus and adding new clause into the prospectus without there being any specific Government Order in this regard. For the above reasons, I hold that the Selection Committee is empowered to consider all the applications received under special category for admission of seats, place them in the order of merit, select and allot the candidates only in the order of merit without there being any further selection on the basis of rule of reservation. For all the above reasons, the petitioner should succeed. Coming to the relief, the selection and admission were over on 30 .9.2003. By the procedure adopted by the respondents, the petitioner could not be allotted a seat in Anna University. In view of the fact that the 12 seats earmarked for Anna University, have been filled up and the petitioner has been allotted to Sri Venkateswara Engineering College, Sriperumbudur and is undergoing the course, I am not inclined to interfere with the selection already made. With the above observation, the Writ Petition is disposed of. No costs. Consequently, W.P.M.P.No.27502/2003 is closed.

Index: Yes
Website: Yes

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To

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3. Secretary to Government
Government of Tamil Nadu
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